IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6730 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNION OF INDIA

Versus

SUNDERSINGH S/O LATE PARASRAM

Appearance:
MR NS SHEVADE for Petitioners
MR GR MALHOTRA for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE P.B.MAJMUDAR

Date of decision: 29/06/2000

ORAL JUDGEMENT: (Per P.B. Majmudar, J.)

Union of India has preferred this Special Civil

Application challenging the order passed by the Central Administrative Tribunal, Ahmedabad in O.A. No.29 of 1998. The respondent herein was the original applicant before the Tribunal. He moved the Tribunal, challenging the order of the original respondents dated 21.3.1997 and 21.3.1997 as well as communication by letter dated 29.9.1997, refixing his pay retrospectively, along with recovery of Rs.28,800/- from the amount of D.C.R.G. as per letter dated 29.9.1997. The aforesaid amount was challenged on the ground that the said action was illegal, arbitrary and contrary to the principles of natural justice. The Tribunal, after considering the evidence on record and after hearing the arguments of both the sides, came to the conclusion that no recovery of the amount could have been effected without giving reasonable opportunity to the original applicant and the said action was, therefore, found to be in violation of the principles of natural justice. So far as refixation of the salary is concerned, it was also found that the aforesaid action was also illegal, and that the same was also found to be bad as suffering from non-application of mind and was found to be contrary to the principles of natural justice. The Tribunal ultimately allowed the application. So far as the amount which is recovered from the original applicant is concerned, the same has already been paid back by the Union of India. So far as the refixation of salary of the original applicant is concerned, we do not find any infirmity in the order of the Tribunal. The fixation was made as back as in 1987 and at earlier occasion, it was done in 1973. The refixation by which his salary was revised by reduction of Rs.150/- was made not only without hearing the applicant, but after his retirement from service. It was not open for the original respondents, i.e. the present petitioners, to initiate action after such a long time. If it was found that by mistake fixation was made, the Department could have taken action against the erring officer, but certainly, no fault could have been attributed to the present respondent. It is not the case of the Department that the present respondent had played any role in getting the aforesaid salary fixed. Since the respondent has retired with effect from 1997, it will be great torture to him again if he has to face proceedings for refixation of his salary. In view of the aforesaid facts and circumstances of the case, we do not want to interfere with the order passed by the Central Administrative Tribunal. We, however, make it clear that either the order of this Court or of the Central Administrative Tribunal should not be treated as a precedent in any other similarly situated cases and the present order is passed in the peculiar facts and

circumstances of the present case, especially considering the question of delay.

With these observations, this petition is dismissed. Rule is discharged.

29th June, 2000 (B.C. Patel, J.)

(P.B. Majmudar, J.)

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(apj)